

July 8, 2016

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: GN Docket No. 13-5, In the Matter of Technology Transitions

Dear Ms. Dortch:

On July 6, 2016, I spoke with Gigi Sohn, Counselor to Chairman Wheeler, with regard to the above captioned proceeding.

I expressed support for Commission action to facilitate the transition to advanced network infrastructure by clarifying the process and criteria that the Commission will use to evaluate a 214(a) discontinuance request from a legacy voice TDM provider. The proposed order's "adequate replacement" criteria are consistent with the Commission's commitment to preserve and advance the enduring values of consumer protection, universal service, public safety, and competition as the bedrock of our nation's communications policy while providing the clarity that carriers need to move forward with the upgrading of their network infrastructure.

However, several aspects of the proposed order raise concerns. First, the Commission should require carriers to certify there is a broadband provider in the service area prior to discontinuing service. Second, the Commission should ensure that there is an adequate public comment period for a 214(a) discontinuance, and suggested 60 days for comment and 30 days for reply comments. Third, the Commission should include affordability of the "adequate replacement" as part of the application when a legacy TDM voice carrier applies for streamlined treatment. Fourth, where the carrier terminating TDM service is the only Lifeline provider in the service area, the Commission should require that an exiting provider first find an alternative Lifeline provider to ensure affordable service. Finally, the Commission should require that licensees make educational materials available in languages other than English.

1. The Commission Must Allow more Time For Public Comment For A Requested TDM Discontinuance.

In the infant stages of the new discontinuance process, the Commission should refrain from placing any applications through the accelerated approval process. As proposed, the public would have a short fifteen days to comment on whether an "adequate replacement" is available. In the beginning, given that the application process will be new to the public, staff and carriers, fifteen days is an insufficient amount of time for the public to adequately weigh in. Therefore, the Commission should wait until the public and staff is familiar with the process before considering applications for streamlined approval of discontinuance petitions.

Alternatively, if the Commission decides to permit streamlined application process from the beginning, the Commission should allow sufficient time for customers and other stakeholders to file sufficient information to demonstrate that the Commission should take the discontinuance request off streamlined treatment and designate it for standard consideration. The commission should modify the Fast Track process for TDM discontinuances to allow a 60 -day comment period and 30-day reply comment period for the public to weigh in on a carrier's application for automatic approval. PK recommends the 90-day comment and reply time frame in light of the 90-day notice period for copper loop retirement adopted in the previous Report and Order. TDM service termination is no less important to the local community than the retirement of the copper loop. This time frame balances the need to provide time for members of the community to gather information and provide adequate evidence for consideration with the need to avoid undue delay.

2. Maintaining Access to Broadband.

In addition, the proposed streamlined adequate replacement criteria do not allow Commission staff to consider whether a service discontinuance would result in households losing access to broadband. The Commission has a congressional mandate to encourage broadband deployment, and as a policy matter, should ensure that any actions it takes do not reduce broadband availability.¹ As demonstrated by the experience on Fire Island in 2013, copper loop retirement and termination of TDM service are likely to result in the loss of home broadband access. Given the express federal policy to affirmatively promote home broadband access,² this result is untenable and contrary to public policy.

The inclusion of broadband availability in a discontinuance review does not contradict the Commission's decision in the Open Internet Order to forbear from application of Section 214(a) to broadband. Rather, this flows from the question the Commission solicited regarding the combined impact of the retirement of the copper loop line and the termination of TDM service. The Commission's determination that the obligation under Section 214(a) to ensure that local communities have the benefit of competition based on copper loop access applies with even greater force to the elimination of broadband access, such as copper loop dependent broadband. The Commission's express solicitation of comment on broadband discontinuance with reference to Fire Island (*see* 2015 FNPRM at ¶¶229-230 & n.705, n. 707), is a logical indication that the Commission would consider the combined impact of copper loop retirement in conjunction with TDM service discontinuance in this instant proceeding. As a matter of law and public policy, the Commission must ensure that a 214(a) discontinuance does not leave some households, businesses, and communities with no broadband access.

3. Affordability.

I also expressed concern over the criteria staff will use to evaluate in the streamline application process with regard to affordability. Although affordability is one of the criteria staff will use to evaluate a discontinuance petition that is not eligible for streamlined treatment, it is unclear whether the Commission will consider affordability (and the other traditional 214(a) discontinuance criteria) prior to placing an application on Fast Track. As proposed, carriers can

¹ 47 U.S.C. §1302.

² *See, e.g.*, Broadband Data Improvement Act of 2008, Pub. L. 110-385.

apply for streamlined treatment by making an adequate substitute showing. Once staff has determined that the carrier has met this burden, the discontinuance petition is then on track for an automatic approval. If the process is implemented as described, Commission staff is under no obligation to ensure that the proposed “adequate substitute” is comparable in pricing to the discontinued service. This could result in a significant price increase for many Americans. Advocates are certainly in favor of the tech transition because of the promise that it offers for new, advanced communications services, but Americans should be better off as a result of the transition, not worse off.

4. Lifeline

Currently, there is no requirement that the Commission consider whether a service discontinuance would result in the loss of access to the Lifeline voice program. If the legacy carrier applying for a service discontinuance under the streamlined process is a Lifeline provider and the Commission grants the service discontinuance without first ensuring that the “adequate replacement” carrier participates in the Lifeline program, the result would be that low-income households would lose the only access to Lifeline available in their area. While advocates understand that there are rules surrounding relinquishing an Eligible Telecommunications Carrier (ETC) lifeline designation when there are multiple ETC lifeline providers in a service area, it is not clear that existing rules cover a situation in which the carrier seeking to discontinue a legacy service is the only ETC lifeline provider. Therefore, the Commission must be clear that granting a service discontinuance will not affect any carrier’s obligations to provide Lifeline services, nor will it leave a service area with no lifeline provider at all.³

4. Educational Outreach.

Last March, the Commission recognized the vital importance of ensuring access to information on the Emergency alert system (EAS) to non-English speakers.⁴ No one can doubt that information about the phone system, which provides access to 9-1-1 and other essential services in addition to its importance in personal communications, is equally critical. The Commission should therefore require that as part of the community outreach plan, applicants for a 214(a) TDM discontinuance must provide information in languages other than English that are spoken in the community of service.

As a basic litmus test, the FCC should look to whether the licensee advertises its services in a language other than English. That a provider makes promotional material available in a non-English language demonstrates (a) that there is a sufficiently large number of primary speakers in that language to warrant the expense of preparing non-English marketing materials; and, (b) the carrier has the capacity to perform the translation.

In accordance with Section 1.1206(b) of the Commission’s rules, this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020.

³ 47 C.F.R. §54.205

⁴ Review of the Emergency Alert System, *Order*, EB Docket No. 04-286 (Rel. March 30, 2016).

Respectfully submitted,

/s/ Harold Feld

Harold Feld

Senior V.P.

Public Knowledge

1818 N Street, NW

Washington, DC 20036

Cc: Gigi B. Sohn